SUPREME COURT, U. S.

FEB 19 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1065

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent,

vs.

THEOPLIS CROCKETT; JOWEL HYSMITH; AUGUSTINE NARCISSE; FRANCES HANGER; BERTHA CYRUS; ETHEL PITTS; ELAINE STRONG; RUTH HANSEN; JOAN SMITH; JO ANNE ORLOFF; RONALD F. GEE; and JERROLD P. HOLZMAN,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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INDEX

	PAGE
Opinion Below	2
The Record	2
Jurisdiction	2
Questions Presented	2
Statement	3
Constitutional And Statutory Provisions Involved	4
Reasons For Granting The Writ	5
Certiorari Should Be Granted To Review The Illinois Supreme Court's Holding That The Illinois Disorderly Conduct Statute Is Compatible With The First and Fourteenth Amendments	5
Conclusion	10
Appendix—(Opinion of the Supreme Court of Illinois)	11

List Of Authorities Cited

Cases:

Connally v. General Construction Co., 269 U.S. 385, 391 (1926)	5, 6
Cox v. Louisiana, 379 U.S. 536, 554 (1965)	9
Dombrowski v. Pfister, 280 U.S. 479 (1965)	9

Giaccio v. Pennsylvania, 383 U.S. 399 (1966) 8
Herndon v. Lowry, 301 U.S. 242, 263 (1937) 7
N.A.A.C.P. v. Button, 371 U.S. 415, 432, 433 (1963) 7
People v. Raby, 40 Ill. 2d 392 ..... 5, 6
Thornhill v. Alabama, 310 U.S. 88, 97-98 (1940) 7
United States v. Capital Traction Co., 34 App. D.C. 592, 19 Ann. Cas. 68 ..... 5, 6, 7
Zwicker v. Koota, 389 U.S. 241, 249-250 (1967) 9

Others:

United States Constitution, Fourteenth Amendment 4
Illinois Revised Statutes, Chapter 38, Section 26-1 (a) 1 ..... 4, 9

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PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT

Petitioners pray that a writ of certiorari issue to review the judgment of the Illinois Supreme Court entered in the above case on November 22, 1968. No petition for rehearing was filed.

OPINION BELOW

The opinion of the Illinois Supreme Court is reported at 41 Ill. 2d 226, 242 N.E. 2d 235 and set out in full as an appendix to this petition.

THE RECORD

A certified copy of the record below has been filed in this Court.

JURISDICTION

The judgment of the Illinois Supreme Court was entered on November 22, 1968. (R. 411.)

Jurisdiction of this Court is invoked pursuant to 28 U.S.C., Section 1257. It is respectfully requested that this Court issue the writ of Certiorari and that the cause be consolidated with *The People of The State of Illinois* v. *Albert A. Raby,* No. 863, October Term, 1968, now pending in this Court.

QUESTIONS PRESENTED

Whether the proscription of Section 26-1 (a) of Chapter 38, Illinois Revised Statutes violates the Fourteenth Amendment by reason of vagueness and overbreadth?

STATEMENT

On May 18, 1967, the petitioners Theopolis Crockett, Jowel Hysmith, Augustine Narcisse, Frances Hanger, Bertha Cyrus, Ethel Pitts, Elaine Strong, Ruth Hansen, Joan Phillips, and Joan Smith, along with other members of the Independent Union of Public Aid Employees went to the County Building of Cook County, Illinois to discuss matters of public welfare. While there some or all of the petitioners sat in the hallway of the County Building while other members of their group spoke with the County Board President. (R. 255, 256.)

On June 1, 1967, the petitioners, Jo Anne Orloff, Ronald F. Gee, and Jerrold P. Holzman along with other members of the Independent Union of Public Aid Employees met with County Commissioner George Dunne in his office at the County Building in Cook County, Illinois, to discuss public welfare matters. Commissioner Dunne terminated the meeting and the defendants remained seated in his office. (A. 391, 392.)

The petitioners were thereafter charged with violating Chapter 38, Section 26-1 (a) of the Illinois Revised Statutes. (R. 24, 38, 60, 82, 104, 126, 148, 170, 192, 214, 322, 331, 353.) Prior to the trial the petitioners filed a motion to strike the complaint on the ground that the statute was unconstitutionally void for vagueness and overbreadth and violative of the Fourteenth Amendment. (R. 31-33, 45-47, 67-69, 89-91, 111-113, 133-135, 155-157, 177-179, 199-201, 221-223, 336-338, 357-359, 369-371.) This motion was denied. (R. 50, 72, 94, 116, 138, 160, 182, 204, 226, 234, 341, 362, 374.)

On review, the Illinois Supreme Court held that Section 26-1 (a)'s proscription is not vague and overbroad by incorporating its decision in *People* v. *Raby*. (Appendix, p. 13.) The Court held by reference that the words "knowingly" and "unreasonable" save the disorderly conduct statute from unconstitutionality. See *People* v. *Raby*, 40 Ill. 2d 392, now pending in this Court, No. 863.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment,

Section I

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any within its jurisdiction the equal protection of the law.

Illinois Revised Statutes, Chapter 38,
Section 26-1 (a)(1)

A person commits disorderly conduct when he knowingly:

(1) Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or . . .

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO REVIEW THE ILLINOIS SUPREME COURT'S HOLDING THAT THE ILLINOIS DISORDERLY CONDUCT STATUTE IS COMPATIBLE WITH THE FIRST AND FOURTEENTH AMENDMENTS.

The petitioners were convicted on general findings of guilty of disorderly conduct. (R. 48-49, 70-71, 92-93, 114-115, 136-137, 158-159, 180-181, 202-203, 224-225, 232-233, 339-340, 360-361, 371-372.) Illinois Revised Statutes, Chapter 38, Section 26-1 (a) 1. The charges and finding of guilty squarely present the problems of vagueness and overbreadth, whose constitutionality under the First and Fourteenth Amendments petitioners challenged below and challenges here.

Petitioners submit that the disorderly conduct is not drawn with the narrow specificity required to inform men of common intelligence what is sought to be prohibited by the statute. *Connally* v. *General Construction Co.,* 269 U.S. 385, 391 (1926). Here, as in *Connally* v. *General Construction Co.,* 269 U.S. 385, 391 (1926), and *United States* v. *Capital Traction Co.,* 34 App. D.C. 592, 19 Ann. Cas. 68 we have convictions under a statute where there is a total absence of any definition of what shall constitute the crime.

The Illinois Supreme Court incorporated by reference its opinion in *People* v. *Raby,* 40 Ill. 2d 392, now pending Certiorari in this Court, No. 863, October Term, 1968, and thereby rejected petitioners' vagueness challenge to the disorderly conduct statute, saying:

> The legislature deliberately chose to frame the provision in general terms, prompted by the futility of

an effort to anticipate and enumerate all of the methods of disrupting public order that fertile minds might devise. "Section 26-1 (a) is a general provision intended to encompass all the usual types of 'disorderly conduct' and 'disturbing the peace.' Activity of this sort is so varied and contingent upon surrounding circumstances as to almost defy definition. In addition, the task of defining disorderly conduct is further complicated by the fact that the type of conduct alone is not determinative but rather culpability is equally dependent upon the surrounding circumstances * * * These considerations have led the Committee to abandon any attempt to enumerate 'types' of disorderly conduct. Instead, another approach has been taken. As defined by the Code, the gist of the offense is not so much that a certain overt type of behavior was accomplished, as it is that the offender knowingly engaged in some activity in an unreasonable manner which he knew or should have known would tend to disturb, alarm or provoke others. The emphasis is on the unreasonableness of his conduct and its tendency to disturb." *People* v. *Raby,* 40 Ill. 2d 392.

The Court holds here, as in *Raby,* that the words "knowingly" and "unreasonable" saved the provision from unconstitutionality, apparently on the theory that the petitioners are not in a position to complain about lack of fair notice, since they know better than anyone exactly what they did wrong.

Given this construction, the decision of the Illinois Supreme Court flies in the face of this Court's decision in *Connally* v. *General Construction Co.,* 269 U.S. 385, 393, where this Court quoted with approval from *United States* v. *Capital Traction Co.,* saying:

". . . The dividing line between what is lawful and unlawful cannot be left to conjecture. The citizen cannot be heard to answer charges based upon penal

> statutes whose mandates are so uncertain that they will reasonably admit of different constructions. A criminal statute cannot rest upon an uncertain foundation. The crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, *in advance,* what course it is lawful for him to pursue. Penal statutes prohibiting the doing of certain things and providing a punishment for their violation, should not admit of such a double meaning that the citizen may act upon one conception of its requirements and the courts upon another." (Emphasis supplied)

One reason for the requirement of specificity as a part of the due process clause is that overly vague statutes allow courts to reach arbitrary, ad hominem, or ad hoc results. Although the void-for-vagueness doctrine had traditionally been viewed as concerned principally with the problem of fair notice to the potential criminal actor, a somewhat more subtle consideration has long been evident in the opinions of this Court's vagueness decisions. This is the concept that a vague statute fundamentally affronts the rule of law embodied in the Due Process clause by permitting and encouraging more or less arbitrary and erratic arrests and convictions. An over-vague criminal law, this Court has recognized "licenses the jury to create its own standard in each case." *Herndon* v. *Lowry,* 301 U.S. 242, 263 (1967). It is "susceptible of sweeping and improper application," *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 432, 433 (1963), furnishing a convenient tool for "harsh and discriminatory enforcement by prosecuting officials, against particular groups deemed to merit their displeasure." *Thornhill* v. *Alabama,* 310 U.S. 88, 97-98 (1940). It "lends itself to selective enforcement against unpopular causes." *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 432, 433.

This potential for impermissible and abusive administration may helpfully be conceived in two intimately related but distinguishable aspects. First, there is the authority which vague laws confer upon the police for arbitrary street enforcement, arbitrary arrest, and similar harassments. Second, there is the propensity of vague laws to enable arbitrary court enforcement, arbitrary conviction. The first aspect was initially recognized by this Court in cases like *Herndon* and *Button,* in which the challenged legislation lent itself to use, and actually appeared to have been used, for the suppression of unpopular political expression, and was voided under the particularly stringent standards of statutory specificity evolved by this Court for First Amendment cases. Because of its origin in these cases, and because in each case the same statutory obscurity which licenses "the jury to create by its own standards" also confronted the citizen with an unfairly and repressively vague line of prohibition, the concern for lawless or arbitrary court enforcement failed for a time to emerge from a complex of other concerns, including traditional fair-notice concerns and free-speech concerns. But in *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966), constitutional invalidation of laws authorizing arbitrary court enforcement came into its own. No question of protecting freedom of expression was involved; and since an issue of judicial standards for sanctions, rather than of standards for conduct demanded of the defendant was presented no problem of fair notice could be made out. This Court held the statute unconstitutional simply because it "contains no standards at all, nor does it place any conditions of any kind upon the jury's power to impose costs . . . Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against

having the Government impose burden upon him except in accordance with the valid laws of the land."

The Illinois Court also rejected the overbreadth challenge to Section 26-1 (a), on the ground that petitioners' conduct was not constitutionally protected. The Court cited *Cox* v. *Louisiana,* 379 U.S. 536, 554 (1965) for the proposition that petitioners' conduct fell within the ambit of the *Cox* dictum that no one could contrary to traffic regulation insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly." See: *People* v. *Raby,* 40 Ill. 2d 392. While the court below does not specifically discuss petitioners' overbreadth challenge it applied the decision in *Raby* to the petitioners.

Here, as in *Raby,* the trouble is that petitioners were not convicted for violation of a valid statute which specifically defines the prohibited conduct. Petitioners' conduct if criminal in any respect violated the provisions of the Criminal Trespass to Land Statute, Chapter 38, Section 21-3 of the Illinois Revised Statutes. The holding that petitioners' conduct violated Section 26-1 (a) sweeps unnecessarily broadly, and thereby may invade the area of protected freedoms. cf. *Zwicker* v. *Koota,* 389 U.S. 241, 249-250 (1967). The statute as construed also sweeps all of the remaining provisions of the Illinois Criminal Code into Section 26-1 (a). It is no answer that the statute might be narrowly construed in a given situation, the statute as it presently stands, has a chilling effect on free speech conduct. See *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965). Nor is it relevant that the acts of the petitioners are not constitutionally protected. It is the vice of the statutes rather than the virtue of the petitioners that becomes the *ratio decedendi.*

CONCLUSION

For the reasons set out above, petitioners ask this Court to grant review, consolidate the cause with *People* v. *Raby,* No. 863, October Term, 1968, and to reverse the Court below.

Respectfully submitted,

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APPENDIX

Docket Nos. 41110, 41111 cons.; Agenda 21,
September, 1968

The People of the State of Illinois, Appellee,

vs.

Theoplis A. Crockett et al., Appellants.

MR. CHIEF JUSTICE SOLFISBURG delivered the opinion of the court:

This case involves two appeals from disorderly conduct convictions in the circuit court of Cook County arising out of certain demonstrations in the County Building. Since the legal questions in both appeals are identical we have consolidated them for review.

The defendants in Docket No. 41111, Theoplis Crockett, Jowel F. Hysmith, Augustine C. Narcisse, Frances E. Hanger, Bertha M. Cyrus, Ethel L. Pitts, Elaine B. Strong, Joan Rae Phillips, Joan A. Smith, and Ruth A. Hansen were arrested on May 18, 1967 and charged with a violation of article 26 of Criminal Code of 1961 (Ill. Rev. Stat. 1967, chap. 38, par. 26—1(a),) in that they "knowingly did an act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; to-wit, Loitering in the Fifth Floor Hallway [of the County Building], Sitting on the floor."

The defendants in No. 41110, JoAnne Orlof, Ronald F. Gee, and Jerrold P. Holzman, were arrested on June 1, 1967 and charged with the same offense, in that they "knowingly did an act in such unreasonable manner as to

alarm or disturb another and to provoke a breach of the peace, to-wit: By remaining seated in the private office of Cook County Commissioner George Dunne and refusing to leave when ordered to do so."

Motions to strike the complaints and for discharge were presented on behalf of all defendants, and were denied. Thereafter defendants waived jury trial, pleaded not guilty and were tried on stipulation of facts, on September 13, 1967.

Neither the State nor the defendants presented any evidence but the cases were submitted on the following stipulations:

In No. 41111:

"MR. KARTON: [Assistant State's Attorney] If it please the court, at this time I believe there will be a stipulation by and between the defendants in their own proper persons and by Mr. Holt, their attorney, and by the people of the State of Illinois represented by John Stamos, State's Attorney of Cook County, that the testimony would show and will show that the facts set forth in the complaint are true and that the said facts set forth in the complaint are sufficient to sustain a finding of guilty as charged in the complaint and that the venue is Chicago, Cook County, Illinois.

MR. HOLT: [defendants' attorney] On behalf of each of the defendants we would so stipulate."

In No. 41110:

"MR. KARTON: There is a stipulation between each of the defendants in his own proper person as represented by counsel, Mr. Holt, and the people of the

State of Illinois, represented by John Stamos, State's Attorney of Cook County, that were Officer Bernard to testify, that his testimony would be the same as the facts set forth in the complaint. It is further stipulated that the matter took place in Chicago, Cook County, Illinois, and that the ages of the three defendants, Ronald Gee, Jerrold Holtzman and JoAnne Orlof are over 21.

MR. HOLT: So stipulated."

Upon the stipulations all defendants were found guilty and fined $100. The defendants appeal directly to this court alleging a violation of their constitutional rights.

Defendants first contend that the disorderly conduct provision of the Criminal Code under which they were convicted is unconstitutional on its face in that it is "vague and over broad." Defendants' argument adds nothing to that advanced in *People* v. *Raby,* Docket No. 40596, May Term, 1968, 40 Ill. 2d 392. We carefully considered these arguments in that case, and here hold the statute constitutional on its face and as applied to these defendants for the reasons set forth in that opinion. See also *United States* v. *Woodward* (7th cir.), 376 F. 2d 136, 141-142.

Defendants next contend that the complaints did not charge the offense with the specificity required by the constitution. We feel that the defendants were adequately informed of the charges and the particular conduct which gave rise to the arrest and complaint. At no time did defendants request a more detailed statement of the offense, and under such circumstances defendants may not maintain that the complaint lacks specificity upon review. *City of Chicago* v. *Joyce,* 38 Ill. 2d 368.

(Supreme Court Opinion)

Defendants last contend that the evidence does not establish their guilt beyond a reasonable doubt. We cannot agree. As we read the stipulations, they establish *prima facie* that the defendants were guilty of the offenses charged. In the absence of any evidence to the contrary, the trial court was justified in finding defendants guilty as charged.

The judgments of the circuit court of Cook County are accordingly affirmed.

Judgments affirmed.